



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XD283**

**Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Permit**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS proposes to issue a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals from five marine mammal stocks listed under the Endangered Species Act (ESA) by the Bering Sea and Aleutian Islands (BSAI) flatfish trawl, the BSAI pollock trawl, and the BSAI Pacific cod longline fisheries. In accordance with the MMPA, NMFS must issue this permit provided it can make the determinations that: the incidental take will have a negligible impact on the affected stocks; a recovery plan for all affected stocks of threatened or endangered marine mammals has been developed or is being developed; and a take reduction plan and monitoring program have been implemented, and vessels in these fisheries are registered. NMFS has made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on the endangered Western North Pacific (WNP) stock of humpback whales, endangered Central North Pacific (CNP) stock of humpback whales, endangered Western U.S. stock of Steller sea lions, threatened Alaska stock of ringed seals, and Alaska stock of bearded seals. Accordingly, NMFS solicits public comments on the draft negligible impact determination (NID) and on the proposal to issue

a permit to vessels that operate in these fisheries for the taking of affected endangered or threatened stocks of marine mammals.

**DATES:** Comments must be received by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by FDMS docket Number NOAA-NMFS-2014-0057, by either of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2014-0057*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian, P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the draft NID for the affected stocks and copies of the recovery plans for humpback whales and Steller sea lions are available at

<http://www.alaskafisheries.noaa.gov/cm/analyses/default.aspx> and

<http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>.

**FOR FURTHER INFORMATION CONTACT:** Kristin R. Mabry, NMFS Alaska Region, 907-586-7490, *Kristin.Mabry@noaa.gov*; or Shannon Bettridge, NMFS Office of Protected Resources, 301-427-8402, *Shannon.Bettridge@noaa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

NMFS proposes to issue a three-year permit under MMPA section 101(a)(5)(E) to participants registered in the Alaska BSAI flatfish trawl and BSAI pollock trawl fisheries to incidentally take individuals from the following marine mammal stocks listed under the ESA: the endangered WNP and CNP stocks of humpback whales, endangered Western U.S. stock of Steller sea lions, threatened Alaska stock ringed seals; and the Alaska stock of bearded seals; and to participants registered in the BSAI Pacific cod longline fishery to incidentally take individuals from the Alaska stock of ringed seals. The bearded seal does not currently have status under the ESA because its ESA listing was vacated by the U.S. District Court for the District of Alaska on July 25, 2014. NMFS is appealing that decision. In the interim, NMFS will continue to consider the effects of fisheries on bearded seals under MMPA section 101(a)(5)(E), even though the ESA listing of the species is currently not in effect.

Pursuant to section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1361 *et seq.*, NMFS shall for a period of up to three consecutive years allow the incidental, but not the intentional, taking of marine mammal species listed under the ESA, 16 U.S.C. 1531 *et seq.*, by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management

Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stocks; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

NMFS proposes to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the BSAI pollock trawl, BSAI flatfish trawl, and BSAI Pacific cod longline fisheries to incidentally take individuals from the WNP and CNP stocks of humpback whales, the Western U.S. stock of Steller sea lions, and Alaska stocks of ringed and bearded seals. Because other stocks of threatened or endangered marine mammals are not taken in Category I or Category II groundfish fisheries (as listed in the 2016 List of Fisheries (LOF)), effects to no other species or stocks are evaluated for this proposed permit. The data for considering these authorizations were reviewed coincident with the preparation of the 2016 MMPA List of Fisheries (80 FR 58427, September 29, 2015), the 2014 marine mammal stock assessment reports (SARs), and recovery plans for humpback whales and Steller sea lions.

Based on observer data and marine mammal reporting forms, the BSAI pollock trawl, BSAI flatfish trawl, and BSAI Pacific cod longline fisheries are Category II fisheries that operate in the ranges of affected stocks. A description of these fisheries can be found in the draft NID (see **ADDRESSES**). These federally-managed fisheries take place inside both state waters (from the coastline out to three nautical miles) and federal waters (three to two hundred nautical

miles from shore). The federally-managed fisheries inside Alaska state waters are often referred to as state “parallel” fisheries and are included in this authorization. All other Category II fisheries that interact with these marine mammal stocks observed off the coasts of Alaska are state-managed fisheries (as opposed to state parallel fisheries). Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report injuries or mortality of marine mammals incidental to their operations.

In accordance with the MMPA, NMFS has determined that incidental taking from the BSAI pollock and flatfish trawl and BSAI Pacific cod longline fisheries will have a negligible impact on WNP and CNP stocks of humpback whales, the Western U.S. stock of Steller sea lions, and Alaska stocks of ringed and bearded seals. This proposed authorization is based on a determination that the incidental take of these fisheries will have a negligible impact on the affected marine mammal stocks; recovery plans have been completed for humpback whales and Steller sea lions, and NMFS is developing recovery plans for ringed and bearded seals; a monitoring program is established, vessels in the fisheries are registered, and the necessary take reduction plan (TRP) has been developed or is being developed.

A previous three-year MMPA permit was issued on December 13, 2010, for BSAI flatfish trawl, BSAI pollock trawl, BSAI Pacific cod longline, and BSAI sablefish pot, all Category II fisheries that were determined to have negligible impacts on ESA-listed marine mammal stocks, including: humpback whale (WNP and CNP stocks), Steller sea lion (Western and Eastern U.S. stocks), fin whale (northeastern Pacific stock), and sperm whale (North Pacific stock) (75 FR 32689, December 29, 2010). Because that permit has expired, NMFS proposes to issue this new three-year permit.

#### **Basis for Determining Negligible Impact**

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if mortality and serious injury (M/SI) incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a draft NID (see **ADDRESSES**).

Although the MMPA does not define “negligible impact,” NMFS has issued regulations providing a qualitative definition of “negligible impact” as defined in 50 CFR 216.103, and through scientific analysis, peer review, and public notice developed a quantitative approach. As it applies here, the definition of “negligible impact” is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.” The development of the approach is outlined in detail in the draft NID made available through this notice and was described in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (e.g., 72 FR 60814, October 26, 2007; 78 FR 54553, September 4, 2013).

The negligible impact criteria are described below and use the Potential Biological Removal (PBR) in their application. The MMPA defines PBR as “the maximum number of animals, not including natural mortalities that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population and was developed to assess the level of incidental take in commercial fisheries.” The PBR level is the product of the minimum population estimate of the stock, one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size, and a recovery factor of between .1 and 1.0.

#### **Criteria for Determining Negligible Impact**

In 1999, NMFS proposed criteria to determine whether M/SI incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock for MMPA 101(a)(5)(E) permits (64 FR 28800, May 27, 1999). In applying the 1999 criteria, Criterion 1 is whether total known, assumed, or extrapolated human-caused M/SI is less than 10% of the potential biological removal level (PBR) for the stock. If total known, assumed, or extrapolated human-caused M/SI is less than 10% of PBR, the analysis would be concluded, and the impact would be determined to be negligible. If Criterion 1 is not satisfied, NMFS may use one of the other criteria as appropriate. Criterion 2 is satisfied if the total known, assumed, or extrapolated human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR. If Criterion 2 is satisfied, vessels operating in individual fisheries may be permitted if management measures are being taken to address non-fisheries-related mortality and serious injury. Criterion 3 is satisfied if total fisheries-related M/SI is greater than 10% of PBR and less than PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 10% of PBR will continue to be used. Criterion 5 states that if total fisheries-related M/SI are greater than PBR, permits may not be issued for that species or stock.

For its analysis NMFS used the 2014 SARs, which estimate mean or minimum annual mortality from observed commercial fisheries. For the ice seals, NMFS also reviewed previous incidental take statements (ITS) associated with ESA section 7 consultations as indicators of the levels of M/SI to these species from groundfish fisheries. ITS included in biological opinions on federal fisheries actions estimate take over a three-year period. In the case of ringed and bearded seals, NMFS used the maximum observed mortality in a given year as the starting point in generating the three-year average, as opposed to the annual average mortality. Since PBRs for

the two ice seals are not currently available, NMFS considered both sources of data in the NID analysis for making a negligible impact determination of the effects of M/SI from groundfish fisheries on those species. The specific ITS comparison analysis is available for review in the draft NID that accompanies this notice.

The time frame for the data used in this analysis includes the most recent five-year period for which data are available and have been analyzed (2008-2012). The NMFS Guidelines for Assessing Marine Mammal Stocks (GAMMS) and the subsequent GAMMS II provide guidance that, when available, the most recent five-year time frame of commercial fishery incidental serious injury and mortality data is an appropriate measure of effects of fishing operations on marine mammals (Wade and Angliss 1997). A five-year time frame provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions as they may change over time. In cases where available observer data are only available outside that time frame, as is the case for state-managed fisheries, the most recent observer data are used. Where entanglement data from the NMFS Marine Mammal Health and Stranding Network are considered, the five-year time frame from 2008-2012 is used.

The draft NID made available through this notice provides a complete analysis of the criteria for determining whether commercial fisheries off Alaska are having a negligible impact on the WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and Alaska stocks of ringed and bearded seals. A summary of the analysis and subsequent determination follows.

### **Description of the Fisheries**

A brief description follows of three Category II federally-managed fisheries in the 2016 List of Fisheries (80 FR 58427, September 29, 2015) with documented M/SI of ESA-listed species during 2008-2012 and considered in this NID analysis.



### *BSAI Flatfish Trawl Fishery*

In 2008, Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands allocated most of the BSAI flathead sole, rock sole, and yellowfin sole to the trawl catcher processor sectors using bottom trawl gear. American Fisheries Act catcher processors and trawl catcher vessels target yellowfin sole allocated to the BSAI trawl limited access sector. Other vessel categories and gear types catch some flatfish incidentally in other directed fisheries. In 2013, 32 vessels targeted flatfish in the BSAI. Rock sole is generally targeted during the roe season, January to March. Then these vessels shift to several different targets; notably Atka mackerel, arrowtooth flounder, flathead sole, yellowfin sole, Pacific cod, and Pacific ocean perch. Vessels also can fish in the Gulf of Alaska to fish for arrowtooth, Pacific cod, flathead sole, rex sole, and rockfish. In the BSAI, most of the flathead sole, rock sole, and yellowfin sole fisheries occur on the continental shelf in the eastern Bering Sea in water shallower than 200 meters. Some effort follows the contour of the shelf to the northwest and extends as far north as Zhemchug Canyon. Very few flathead sole, rock sole, and yellowfin sole are taken in the Aleutian Islands due to the limited shallow water areas.

The SARs have documented incidental takes of marine mammals in this fishery since 1988. Observer coverage during 2008-2012 was 100%. Species taken include bearded seal, harbor porpoise and harbor seal (Bering Sea), killer whale (Alaska resident), killer whale (GOA, AI, and BS transient), northern fur seal (Eastern Pacific stock), spotted seal (Alaska stock), ringed seal (Alaska stock), ribbon seal (Alaska stock), Steller sea lion (Western U.S. stock), and Pacific walrus. Tables 3-7 in the draft NID report the observed and mean annual mortality of WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and the Alaska stocks of bearded and ringed seals.

### *BSAI Pollock Trawl Fishery*

In 2013, 121 vessels targeted pollock in the Bering Sea and Aleutian Islands management area. The pattern of the recent pollock fishery in the BSAI is to focus on a winter, spawning-aggregation fishery. The A season fishery is January 20 through June 10. Fishing in this season lasts about 8-10 weeks depending on the catch rates. The B season is June 10 through November 1. Fishing in the B season is typically July through October and has been conducted to a greater extent west of 170°W longitude compared to the A season fishing location in the southern Bering Sea. Directed fishing is closed for pollock in all areas from November 1 to January 20. Fishing is also closed around designated rookeries and haulouts out to 20 nm and closed within Steller sea lion foraging areas in the Bering Sea and Aleutian Islands. The BSAI pollock total allowable catch (TAC) is allocated 40% to the A season and 60% to the B season. No more than 28% of the annual directed fishing allowance for pollock can be taken inside the Sea Lion Conservation Area in the southern Bering Sea before April 1.

The SARs have recorded incidental takes of marine mammals in this fishery since 1988. Observer coverage ranged from 85-98% during 2008-2012. Species taken include Dall's porpoise (Alaska stock), harbor seal, humpback whale (CNP stock), humpback whale (WNP stock), fin whale (Northeast Pacific stock), killer whale (GOA, Aleutian Islands, and Bering Sea Transient stocks), minke whale (Alaska stock), ribbon seal (Alaska stock), spotted seal (Alaska stock), ringed seal (Alaska stock), bearded seal (Alaska stock), northern fur seal (Eastern Pacific stock), Steller sea lion (Western U.S. stock). Tables 3-7 in the draft NID report the observed and mean annual mortality of WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and the threatened Alaska stocks of bearded and ringed seals.

### *BSAI Pacific Cod Longline Fishery*

This fishery targets Pacific cod with hook and line gear in the Bering Sea with 45 permits issued or fished. Fishing effort in this fishery occurs within the U.S. EEZ of the Eastern Bering Sea and the portion of the North Pacific Ocean adjacent to the Aleutian Islands, which is west of 170°W. longitude up to the U.S.-Russian Convention Line of 1867. Management measures for the BSAI groundfish fisheries constrain fishing both temporally and spatially. The authorized gear, fishing season, criteria for determining fishing seasons, and area restrictions by gear type are defined in the regulations implementing the BSAI fishery management plan (50 CFR part 679).

The SARs have recorded incidental takes of marine mammals in this fishery since 1988. Observer coverage ranged 51-64% from 2008-2012. Species taken include Dall's porpoise (Alaska stock), killer whale (GOA, AI, and BS Transient stocks), northern fur seal (Eastern Pacific stock), and ringed seal (Alaska stock). Table 7 in the draft NID reports the observed and mean annual mortality of the Alaska stock ringed seals.

### **Negligible Impact Determinations**

The draft NID made available through this notice provides a complete analysis of the criteria for determining whether commercial fisheries off Alaska are having a negligible impact on WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and the Alaska stocks of bearded and ringed seals. A summary of the analysis and subsequent determination follows.

#### *Humpback Whale, WNP Stock*

Criterion 1 was not satisfied because the total human-related mortalities and serious injuries are not less than 10% PBR. The PBR calculated for this stock is 3.0 animals (Allen and Angliss 2015). The annual average M/SI to the WNP stock of humpback whales from all human-

caused sources is 2.16 animals, which is 71.87% of this stock's PBR (above the 10% PBR (0.3 animals) threshold). As a result, NMFS cannot make a negligible impact determination based on Criterion 1 and the other criteria must be examined.

Criterion 2 was also not satisfied, because fisheries-related mortality alone exceeds 10% of PBR. The estimate of fisheries-related mortality is 0.9, which is 30% of the PBR.

NMFS used NID Criterion 3 to evaluate impacts of commercial fisheries on the WNP stock of humpback whales because the total fisheries related M/SI is greater than 10% of the stock's PBR but less than PBR, and the stock is stable or increasing. The total of 0.9 fisheries-related M/SI per year is above 10% of PBR (0.3), and it is below the stock's PBR of 3.0 animals. The 2014 SAR reports a 6.7% annual rate of increase over the 1991-1993 estimate using the best available information, but acknowledges that number is biased high to an unknown degree with no confidence limits. Further, there are only minor fluctuations in expected fisheries-related M/SI. Using Criterion 3 and the best available information on the population growth of the WNP stock of humpback whales and on fisheries-related M/SI as reported in the 2014 SAR, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on the stock.

#### *Humpback Whale, CNP Stock*

Criterion 1 was not satisfied because the total human-related mortalities and serious injuries are not less than 10% PBR. The PBR calculated for this stock is 82.8 animals. The annual average M/SI to the CNP stock of humpback whales from all human-caused sources is 15.89 animals, which is 19.19% of this stock's PBR (above the 10% PBR (8.28 animals) threshold). As a result, NMFS cannot make a negligible impact determination based on Criterion 1 and the other criteria must be examined.

CNP humpback whales do not precisely fit the criteria as written for Criterion 2 or 3. Criterion 2 is satisfied if the total known, assumed, or extrapolated human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR. Criterion 2 was not satisfied because total human-caused mortality (15.89) does not exceed PBR (82.8).

Criterion 3 is satisfied if total fishery-related M/SI is greater than 10% PBR, less than PBR, and the population is stable or increasing. The fisheries-related M/SI (3.95) for this stock is 4.77% of PBR. The fisheries-related M/SI is less than 10% of PBR and therefore less than PBR.

Although CNP humpback whales do not precisely meet the criteria for Criterion 1, 2, or 3, data support a negligible impact determination for this stock. The stock's population growth rate is increasing, increases in fisheries-related M/SI are limited, and human-caused M/SI is below PBR. The 2014 SAR reports a range of annual rates of population increase from 4.9-10%, depending on the study and specific area. These data suggest that the stock is increasing. The level of total human-caused M/SI (15.89 animals) is 19.19% of the PBR and is expected to remain below PBR for the foreseeable future. Thus, the expected total human-caused M/SI is well below the Criterion 2 M/SI threshold supporting a negligible impact determination. Further, there are only minor fluctuations in fisheries-related M/SI. The expected total fisheries-related M/SI is well below the Criterion 3 M/SI threshold supporting a negligible impact determination. NMFS determines that, based on the best available information, M/SI incidental to commercial fishing will have a negligible impact on the stock.

#### *Steller Sea Lion, Western U.S. Stock*

Criterion 1 was not satisfied for Steller sea lion, Western U.S. stock, because the total human-related mortalities and serious injuries are not less than 10% PBR. The PBR calculated for this stock is 292 animals. The annual average M/SI to the Western U.S. stock of Steller sea

lion from all human-caused sources is 244.9 animals, which is 83.87% of this stock's PBR (above the 10% PBR (29.2 animals) threshold). As a result, NMFS cannot make a negligible impact determination based on Criterion 1 and the other criteria must be examined.

Criterion 2 was also not satisfied. The total fishery-related M/SI per year is 32.7 animals per year and is 11.2% of the stock's PBR of 292 animals. Total human-caused M/SI is 83.87% of the stock's PBR of 292 animals. Because total human-caused M/SI are not greater than PBR, and fisheries-related mortality is not less than 10% PBR, NMFS cannot make a negligible impact determination based on Criterion 2.

NMFS used NID Criterion 3 to evaluate impacts of commercial fisheries on the Steller sea lion, Western U.S. stock because the total fisheries related M/SI is greater than 10% of the stock's PBR but less than PBR and the stock is stable or increasing. The total M/SI from commercial fisheries of 32.7 animals per year is 11.2% of PBR (above 10% PBR), and is below the stock's PBR of 292; there are only minor fluctuations in expected fisheries-related M/SI. The level of total human-caused M/SI is estimated to be below PBR and is expected to remain below PBR for the foreseeable future. Survey data collected since 2000 indicate that Steller sea lion decline continues in the central and western Aleutian Islands but regional populations east of Samalga Pass have increased or are stable. Overall, the stock is increasing at an annual rate of 1.67 (non-pups) and 1.45 (pups). Using the best available information on this stock of Steller sea lions and on the fisheries-related M/SI, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on this stock based on Criterion 3.

#### *Bearded Seal, Alaska Stock*

The best available information on total fisheries-related M/SI for the bearded seal stock is not consistent with thresholds required for NMFS to make a negligible impact determination for

this stock based on Criterion 1. NMFS estimates that total human-caused M/SI is likely greater than 10% PBR based on the best available information on minimum stock abundance and total human-caused M/SI. Although NMFS cannot calculate PBR for this stock with the available information, NMFS examined whether total human-caused M/SI for this stock is less than a proxy for PBR based on the formula established in the MMPA for calculating PBR. Section 3(20) of the MMPA defines PBR as “the product of the following factors: (A) the minimum population estimate of the stock ( $N_{\text{MIN}}$ ); (B) one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size ( $0.5R_{\text{max}}$ ); and (C) a recovery factor of between 0.1 and 1.0 ( $F_R$ )” (16 U.S.C. 1362(20)).  $\text{PBR} = N_{\text{MIN}} \times 0.5R_{\text{MAX}} \times F_R$ .

NMFS evaluated the current human-caused M/SI under the assumption that it represents a percentage of the stock’s unknown PBR. When considering Criterion 1, NMFS rearranged the PBR equation to estimate whether total human-caused M/SI for this stock is likely less than 10% of a proxy PBR for the stock,  $N_{\text{MIN}} = \text{PBR} / (0.5R_{\text{MAX}} \times F_R)$ .

The total human-caused M/SI is 6,790.22 animals. If this total human related M/SI of 6,790.22 animals were equal to 10% of the stock’s PBR,  $N_{\text{MIN}}$  would need to be 2,263,406 bearded seals (given a  $F_R$  of 0.5 and a recommended pinniped  $R_{\text{max}}$  of 12%). An  $N_{\text{MIN}}$  of 2,263,406 is far greater than the crude estimate of 155,000 animals based on regional surveys throughout the seal’s Alaska range provided in the 2010 Status Review and even greater than the more recent core area estimate of 61,800. Because this population level is highly unlikely, NMFS determines that the annual average total human-caused M/SI of 6,790.22 animals is likely greater than 10% of PBR for this stock. Therefore, NMFS cannot make a negligible impact determination for this stock based on Criterion 1, and the other criteria must be examined.

NMFS used the equation in a similar manner to the process above in Criterion 1 to

evaluate whether Criterion 2 was satisfied (i.e., if total human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR). NMFS first evaluated whether the total human-caused mortality estimate of 6,790.22 animals is likely greater than the stock's proxy PBR. Based on the PBR equation, if the total human-caused M/SI of 6,790.22 were equal to PBR, the  $N_{\text{MIN}}$  for this stock would need to be 226,340.7. However, core area estimate for the central and eastern Bering Sea of 61,800 bearded seals and the 2010 Status Review estimate of 155,000 are both considerably less than 226,340.7. If  $N_{\text{MIN}}$  is less than 226,340.7 animals, solving for the proxy PBR level based on the PBR equation would result in a proxy PBR level smaller than 6,790.22 animals. Therefore, NMFS estimates that total human-caused mortality is greater than a proxy PBR.

NMFS then rearranged the PBR equation to evaluate whether fisheries-related M/SI for this stock is likely equal to 10% of the stock's proxy PBR,  $N_{\text{MIN}} = \text{PBR} / (0.5R_{\text{MAX}} \times F_R)$ . The annual average fisheries-related M/SI is 2.22 animals. If the annual average fisheries-related M/SI of 2.22 were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 22.2 animals. Based on the rearranged PBR equation above, an  $N_{\text{MIN}}$  of 740 animals would be required to calculate the proxy PBR level of 22.2 animals.

As indicted above, NMFS reviewed other analyses in which M/SI to bearded seals from groundfish fisheries has been evaluated. NMFS issued an ITS authorizing take of bearded seals in the 2014 ESA section 7 consultation on the North Pacific groundfish fisheries. NMFS estimated that 18.0 seals would be taken in a three-year period. Using an annual average of 6.0 seals as a second estimate for annual fisheries-related M/SI, if 6.0 bearded seals were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 60 animals. Based on the rearranged PBR equation above, an  $N_{\text{MIN}}$  of 2,000 animals would be required to calculate the



proxy PBR level of 60 animals.

Using the best information currently available, the core area population estimate for the central and eastern Bering Sea of approximately 61,800 bearded seals and the 2010 Status Review estimate of 155,000 are both orders of magnitude greater than an  $N_{\text{MIN}}$  of 740 or 2,000 animals. Because these very low population levels are highly unlikely, NMFS determines that fisheries-related M/SI is less than 10% of a proxy PBR.

NMFS used NID Criterion 2 to evaluate impacts of commercial fisheries on the bearded seal because the total human-caused M/SI are likely greater than the stock's PBR, the total fisheries-related M/SI are likely less than 10% of the PBR, and management measures are being taken to address non-fisheries-related M/SI. Non-fisheries-related M/SI as reported in the SARs include subsistence and research. The ESA provides take exemption for subsistence harvest of listed species by Alaska Natives (16 U.S.C. 1539(e)). Likewise, the MMPA provides take exemption for subsistence harvest of marine mammals by Alaska Natives (16 U.S.C. 1371(b)). Bearded seals, ringed seals, and other ice seal species are co-managed by the Ice Seal Committee and NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. Currently, the subsistence harvest of ice seals by Alaska Natives appears to be sustainable and does not pose a threat to the populations.

Based on NID Criterion 2 and the best available information on bearded seal population, fisheries-related M/SI, and total human-caused M/SI, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on the stock. This determination is supported by review of M/SI incidental to U.S. commercial fishing, revealing total commercial fishery M/SI is low, and the fisheries where bycatch does occur are monitored extensively. If bycatch rates change, NMFS would have that information relatively quickly and could reevaluate the

NID as necessary. Also, the non-fishery M/SI due to subsistence hunting is monitored and although the current subsistence harvest is substantial in some areas, there is little to no evidence that subsistence harvests have or are likely to pose serious risks to the Alaska stock of bearded seals.

### *Ringed Seal, Alaska Stock*

The best available information on total fisheries-related M/SI for the ringed seal stock is not consistent with thresholds required for NMFS to make a NID for this stock based on Criterion 1. NMFS estimates that total human-caused M/SI is likely greater than PBR based on the best available information on minimum stock abundance and total human-caused M/SI. Although NMFS cannot calculate PBR for this stock with the available information, NMFS examined whether total human-caused M/SI for this stock is less than a proxy for PBR based on the formula established in the MMPA for calculating PBR. As described in the Criterion 1 analysis for the bearded seal, NMFS rearranged the PBR equation to estimate whether total human-caused M/SI for this stock is likely less than 10% of the stock's PBR.

NMFS estimates that total human-caused M/SI for ringed seals is 9,571.32 animals. If the total human related M/SI of 9,571.32 animals were equal to 10 % of the stock's proxy PBR, the proxy PBR would have to be 95,713.2 and  $N_{\text{MIN}}$  for this population would need to be 3,190,440 ringed seals (given a  $F_R$  of 0.5 and a recommended pinniped  $R_{\text{MAX}}$  of 12%). Because an  $N_{\text{MIN}}$  of 3,190,440 ringed seals is far greater than the best available estimate of 170,000 ringed seals in the U.S. EEZ of the Bering Sea in late April (Conn et al. 2013), NMFS determines that the annual average M/SI to the Alaska stock of ringed seal from all human-caused sources of mortality (9,571.32) is likely greater than 10% of a proxy PBR for this stock. Therefore, NMFS cannot make a negligible impact determination for this stock based on Criterion 1, and the other

criteria must be examined.

NMFS used the equation in a similar manner to the process above in Criterion 1 to evaluate whether Criterion 2 was satisfied (i.e., if total human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR). NMFS first evaluated whether the total human-caused mortality estimate of animals is likely greater than the stock's proxy PBR. Based on the PBR equation, if the total human-caused M/SI of 9,571.32 were equal to a proxy PBR, the  $N_{\text{MIN}}$  for this stock would need to be 319,044. However, the best available population estimate of 170,000 ringed seals is considerably less than 319,044 animals. If  $N_{\text{MIN}}$  is less than 319,044, solving for a proxy PBR based on the PBR equation would result in a proxy PBR smaller than 9,571.32 animals. Therefore, NMFS estimates that total human-caused M/SI is greater than a proxy PBR.

NMFS then rearranged the PBR equation to examine whether fisheries-related M/SI for this stock is likely equal to 10% of the stock's proxy PBR,  $N_{\text{MIN}} = \text{PBR} / (0.5R_{\text{MAX}} \times F_R)$ . The annual average fisheries-related M/SI is 4.12 animals. If the annual average fisheries-related M/SI of 4.12 were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 41.2 animals. Based on the rearranged PBR equation above, an  $N_{\text{MIN}}$  of 1,373 animals would be required to calculate the proxy PBR level of 41.2 animals.

As with the bearded seals, NMFS also reviewed other analyses in which M/SI to ringed seals from groundfish fisheries has been evaluated. NMFS issued an incidental take statement authorizing take of ringed seals in the 2014 ESA section 7 consultation on the North Pacific groundfish fisheries. NMFS estimated that 36.0 seals would be taken in a three-year period. Using an annual average of 12.0 seals as a second estimate for annual fisheries-related M/SI, if 12.0 seals were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 120

animals. Based on the PBR equation above, an  $N_{\text{MIN}}$  of 4,000 animals would be required to calculate the proxy PBR level of 120 animals.

Preliminary analysis of the U.S. surveys, which included only a small subset of the 2012 data, produced an estimate of 170,000 ringed seals in the U.S. EEZ of the Bering Sea in late April. This estimate is orders of magnitude greater than an  $N_{\text{MIN}}$  of 1,373 animals or 4,000 animals. Because these very low population levels are highly unlikely, NMFS determined that fisheries-related M/SI is less than 10% of PBR.

Criterion 2 states that if the total human-caused M/SI are greater than PBR and fisheries related mortality is less than 10% of PBR, “individual fisheries may be permitted if management measures are being taken to address non-fisheries-related M/SI.” Non-fisheries-related M/SI as reported in the SARs include subsistence and gunshots. The ESA provides take exemption for subsistence harvest of listed species by Alaska Natives (16 U.S.C. 1539(e)). Likewise, the MMPA provides take exemption for subsistence harvest of marine mammals by Alaska Natives (16 U.S.C. 1371(b)). Bearded seals, ringed seals, and other ice seal species are co-managed by the Ice Seal Committee and NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. Currently, the subsistence harvest of ice seals by Alaska Natives appears to be sustainable and does not pose a threat to the populations.

Based on NID Criterion 2 and the best available information on ringed seal population, fisheries-related M/SI, and total human-caused M/SI, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on the stock. This determination is supported by review of M/SI incidental to U.S. commercial fishing, revealing total commercial fishery M/SI is low, and the fisheries where bycatch does occur are monitored extensively. If bycatch rates change, NMFS would have that information relatively quickly and could reevaluate the

NID as necessary. Also, the non-fishery M/SI due to subsistence hunting is monitored and although the current subsistence harvest is substantial in some areas, there is little to no evidence that subsistence harvests have or are likely to pose serious risks to the Alaska stock of ringed seals.

### **Conclusions for Proposed Permit**

In conclusion, based on the negligible impact criteria outlined in 1999 (64 FR 28800), the 2014 Alaska SARs, the best scientific information and data available, NMFS has determined that for a period of up to three years, M/SI incidental to the BSAI pollock trawl and BSAI flatfish trawl fisheries will have a negligible impact on WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and Alaska stocks of bearded and ringed seals. Additionally, NMFS has determined that for a period of up to three years, M/SI incidental to the BSAI Pacific cod longline fishery will have a negligible impact on the Alaska stock of ringed seals.

The impacts on the human environment of continuing and modifying the Bering sea trawl fisheries, including the taking of threatened and endangered species of marine mammals, were analyzed in the Biological Opinion for Authorization of Groundfish Fisheries under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Island Management Area; in the Alaska Groundfish Harvest Specifications Supplemental Information Report; the ESA section 7 Biological Opinion that considered effects from the groundfish fisheries on bearded seals; in the ESA section 7 Biological Opinion on Oil and Gas Leasing and Exploration Activities in the U.S. Beaufort and Chukchi Seas; and in the Biological Opinion on the Authorization of the Alaska Groundfish Fisheries Under the Proposed Revised Steller Sea Lion Protection Measures.

Because this permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

### **Recovery Plans**

Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA-listed species, unless such a plan will not promote the conservation of the species. Recovery Plans for humpback whales and Steller sea lions have been completed (see **ADDRESSES**). NMFS is developing recovery plans for the Alaska stocks of both bearded and ringed seals.

### **Vessel Registration**

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. MMPA registration for participants in the BSAI trawl and longline fisheries has been integrated with the Federal groundfish limited entry permit process of the Federal Vessel Monitoring System.

### **Monitoring Program**

BSAI trawl and longline fisheries considered for authorization under this permit are monitored by NMFS-certified observers in the North Pacific Groundfish Observer Program. The rate of observer coverage is high (ranging from 50-100%) and is recorded by fishery and by year in the draft NID analysis. Accordingly, as required by MMPA section 118, a monitoring

program is in place for the BSAI Pollock trawl, flatfish trawl, and Pacific cod longline fisheries.

### **Take Reduction Plans**

MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. With the exception of the bearded seal, the stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA (MMPA section 3(19)(C)). The three fisheries considered for this permit are Category II fisheries. Therefore, the four listed stocks and three fisheries meet the triggers for convening a take reduction team (TRT) and developing a TRP.

The obligations to develop and implement a TRP are further subject to the availability of funding. MMPA section 118(f)(3) contains specific priorities for developing TRPs. At this time, NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA sections 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the WNP and CNP stocks of humpback whale, the Western U.S. stock of Steller sea lions, the Alaska stock of bearded seals, and the Alaska stock of ringed seals as lower priorities compared to other marine mammal stocks and fisheries for establishing TRTs, based on M/SI levels incidental to those fisheries and population levels and trends. Accordingly, given these factors and NMFS' priorities, developing TRPs for these five stocks in these three fisheries will be deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRTs.

### **Solicitation for Public Comments**

NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit. As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized fisheries have been satisfied: BSAI pollock trawl, BSAI flatfish trawl, and BSAI Pacific cod longline. Accordingly, NMFS proposes to issue a permit to participants in the BSAI pollock and flatfish trawl Category II fisheries for the taking of individuals from the WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, Alaska stock of bearded seals, and the Alaska stock of ringed seals (the that occurs within the U.S. Exclusive Economic Zone (EEZ) of the Beaufort, Chukchi, and Bering Seas) incidental to the fisheries' operations, and proposes to issue a permit to participants in the BSAI Pacific cod longline Category II fisheries for the taking of individuals from the Alaska stock of ringed seals incidental to the fisheries' operations (Table 1). As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, any mortality or serious injury must be reported to NMFS.

Table 1. List of Fisheries Authorized to Take Specific Threatened and Endangered Marine Mammals Incidental to Commercial Fishing Operations.

Fishery	Category	Marine Mammal Stock
HI deep-set (tuna target) longline	I	False killer whale, MHI IFKW stock Humpback whale, CNP stock Sperm whale, Hawaii stock
CA thresher shark/swordfish drift gillnet (>14 in mesh)	I	Humpback whale, CA/OR/WA stock Sperm whale, CA/OR/WA stock
HI shallow-set (swordfish target)	II	Humpback whale, CNP stock



longline/set line		
AK Bering Sea/Aleutian Islands flatfish trawl	II	Humpback whale, CNP stock Humpback whale, WNP stock Steller sea lion, Western U.S. stock Bearded seal, Alaska stock Ringed seal, Alaska stock
AK Bering Sea/Aleutian Island pollock trawl	II	Humpback whale, CNP stock Humpback whale, WNP stock Steller sea lion, Western U.S. stock Bearded seal, Alaska stock Ringed seal, Alaska stock
AK Bering Sea/Aleutian Islands Pacific cod longline	II	Ringed seal, Alaska stock
WA/OR/CA sablefish pot	II	Humpback whale, CA/OR/WA stock

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